

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
	)
SOUTH CAROLINA EDUCATIONAL	)
TELEVISION COMMISSION	)
	)
Educational Broadband Service Stations	)
WHR465 (B-Group), Conway, SC	)
WHR609 (G-Group), Lancaster, SC	)
WHR674 (C-Group), Columbia, SC	)
WHR933 (C-Group), Walterboro, SC	)
WHR957 (C-Group), Anderson, SC	)
WHQ447 (B-Group), White Stone, SC	)
WND422 (A-Group), Camden, SC	)
WND451 (A-group), Winnsboro, SC	)
WND452 (A-Group), Pickens, SC	)
WND532 (G-Group), Marion, SC	)
WND533 (G-Group), Beaufort, SC	)
WND534 (A-Group), Greenwood, SC	)
	)
Petition for Waiver of Section 27.1206 of the	)
Commission's Rules	)
	)

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 26, 2014**

**Released: March 27, 2014**

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we deny a waiver request filed by South Carolina Educational Television Commission ("SCETV"), a State governmental entity and an Educational Broadband Service ("EBS") licensee in South Carolina, asking the Commission to waive its decision not to award the EBS stations listed above ("Stations"), which were licensed as secondary studio-to-transmitter links ("STLs"), a Geographic Service Area ("GSA"). We find that SCETV has failed to show how granting the stations "customized" GSAs furthers the Commission's decision that stations licensed as STLs remain subordinate to stations licensed on a primary basis. We also find that SCETV has failed to show how granting the Stations customized GSAs is in the public interest.

**II. BACKGROUND**

2. SCETV, a State governmental entity in South Carolina, operates a state-wide EBS (formerly known as Instructional Television Fixed Service ("ITFS")) network in the 2500-2690 MHz band ("2.5 GHz band"), which consists of 65 constructed primary EBS stations that provide multichannel coverage

of schools and other educational sites across South Carolina.<sup>1</sup> When SCETV was developing its state-wide network of 65 primary EBS stations, it applied for and received additional authorization to operate the 12 Stations as secondary point-to-point STLs.<sup>2</sup> SCETV intended to use these stations to relay signals from the origination point to primary EBS stations, which, in turn, transmitted SCETV video services over wide areas across the State.<sup>3</sup>

3. Originally, ITFS stations were licensed on a site-specific basis, operating as either primary or secondary point-to-point stations. In 1991, however, in an effort to promote the development of multichannel video programming services that would compete with cable television systems (a/k/a “wireless cable” services), the Commission authorized a 15-mile Protected Service Area (“PSA”) to some ITFS licensees, specifically, to those ITFS licensees that leased excess capacity to “wireless cable” operators.<sup>4</sup> In 1995, these 15-mile PSAs were expanded to 35 miles.<sup>5</sup> In 1998, to facilitate the operational and technical flexibility of the 2.5 GHz band for two-way communication services, the Commission adopted the *Two-Way Order* in which it granted all ITFS licensees a 35-mile PSA, and granted individual protection to all receive sites registered through September 17, 1998, the adoption date of the *Two-Way Order*.<sup>6</sup> In 1999, in the *Two-Way Reconsideration Order*, the Commission affirmed its decision granting all ITFS stations a PSA.<sup>7</sup> In 2000, in the *Two-Way Second Reconsideration Order*, however, the Commission reversed its decision and concluded that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection because secondary stations, usually STLs, have not traditionally been given protection relative to primary stations.<sup>8</sup>

4. On January 10, 2005, the new rules applicable to the 2.5 GHz band became effective and the name of the educational service in the band was changed from ITFS to EBS.<sup>9</sup> The new rules were designed to facilitate the development and deployment of advanced wireless services, including fixed and

---

<sup>1</sup> Petition for Waiver of Section 27.1206 of the Commission’s Rules, South Carolina Educational Television Commission (filed Aug. 6, 2010) (Waiver Request) at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Amendment of Parts 21, 43, 74, 78, and 94 of the Commission’s Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service & Cable Television Relay Service, Gen. Docket No. 90-54, *Order on Reconsideration*, 6 FCC Rcd 6764, 6766-6767 ¶¶ 9-10 (1991). PSA radii were circles drawn from the main transmitter.

<sup>5</sup> Amendment of Part 74 of the Commission’s Rules with Regard to the Instructional Television Fixed Service, MM Docket No. 93-94, *Report and Order*, 10 FCC Rcd 2907, 2917 ¶ 59 (1995).

<sup>6</sup> Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order*, MM Docket No. 97-217, 13 FCC Rcd 19112, 19173 ¶ 114 (1998).

<sup>7</sup> Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Order on Reconsideration*, MM Docket No. 97-217, 14 FCC Rcd 12764, 12773-12776 ¶¶ 20-22 (1999).

<sup>8</sup> Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 97-217, 15 FCC Rcd 14566, 14572 ¶ 24 (2000) (“*Two-Way Second Reconsideration Order*”).

<sup>9</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, 14169 ¶ 6 (2004) (“*BRS/EBS R&O*”). See also 69 FR 72020.

mobile wireless broadband.<sup>10</sup> As part of this new design, the Commission converted licenses that had been granted PSAs in the ITFS to Geographic Service Areas (“GSAs”) in the newly created EBS.<sup>11</sup> This change reduced the administrative burden on EBS licensees because they would no longer be required to seek prior Commission approval for certain actions, such as the location of transmitters.<sup>12</sup> Secondary STLs were not granted GSAs, however, because under ITFS STLs were licensed on a point-to-point secondary basis and not on a PSA basis. Thus, when the Commission converted PSAs to GSAs, STLs remained licensed on a point-to-point secondary basis and were not granted GSAs. The Commission also developed a methodology to determine GSA boundaries when the PSAs of adjacent co-channel licensees overlap; these overlapping PSAs occurred, in part, when the Commission enlarged the PSAs from 15-mile circles to 35-mile circles.<sup>13</sup> Specifically, the Commission decided that the GSA boundaries of adjacent market co-channel licensees with overlapping PSAs would be determined by “splitting-the-football,” in which the adjacent market co-channel licensees drew a chord between the intersection points of their overlapping 35-mile PSAs.<sup>14</sup> This methodology was codified in Section 27.1206 of the Commission’s Rules.<sup>15</sup>

5. On August 6, 2010, SCETV filed the instant waiver request. SCETV asks the Bureau for a “limited” waiver of Section 27.1206 of the Commission’s Rules to grant the Stations a “customized” GSA containing only those areas that are outside the GSAs of all neighboring co-channel EBS stations, *i.e.*, the GSAs of the Stations would not be able to encroach upon the GSAs of neighboring co-channel licensees.<sup>16</sup> In other words, SCETV agreed that it would not “split-the-football” when that the GSAs of the Stations overlapped with the GSAs of adjacent co-channel licensees, but would instead reduce the size of the GSAs of the respective Stations.

6. When SCETV filed its waiver request, it reported that it was in the process of transitioning its EBS facilities from a traditional one-way video model (which it provided under ITFS) to a model that relies on wireless broadband deployments in conjunction with its wireless operators/lessees Clearwire Spectrum Holdings III and Digital Bridge Spectrum Corporation.<sup>17</sup> SCETV argued that unless the Stations are able to obtain GSAs there will be significant coverage gaps in SCETV’s and the operators’s networks.<sup>18</sup>

7. On September 14, 2010, the Broadband Division of the Wireless Telecommunications Bureau (“Division”) released a Public Notice seeking comment on SCETV’s Waiver Request.<sup>19</sup> Comments were due on or before September 29, 2010 and Reply Comments were due on or before October 12, 2010.<sup>20</sup>

<sup>10</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14190-14191 ¶ 55.

<sup>11</sup> *Id.*, 19 FCC Rcd at 14189-14190 ¶ 54.

<sup>12</sup> *Id.*, 19 FCC Rcd at 14190 ¶ 54.

<sup>13</sup> *Id.*, 19 FCC Rcd at 14192 ¶ 60.

<sup>14</sup> *Id.*, 19 FCC Rcd 14192 ¶¶ 59-60.

<sup>15</sup> 47 C.F.R. § 27.1206(a)(1).

<sup>16</sup> Waiver Request at 1-2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> Wireless Telecommunications Bureau Seeks Comment on Request by South Carolina Educational Television Commission for Waiver to Grant Geographic Service Areas to Educational Broadband Service Stations Licensed as Secondary Studio-to-Transmitter Links, *Public Notice*, 25 FCC Rcd 13101 (WTB BD 2010).

<sup>20</sup> *Id.* at 13101. We grant SCETV’s Motion For Leave to File Further Reply Comments (filed on Oct. 21, 2010) in response to the Reply Comments submitted by the Instructional Telecommunications Foundation (ITF), which were filed with only one day remaining in the pleading cycle, thus not giving SCETV adequate time to reply to ITF’s

(continued....)

Rowan-Cabarrus Community College and Asheville-Buncombe Technical Community College support the waiver request so long as the GSAs of their respective stations are not reduced as a result of a grant of the waiver request.<sup>21</sup> Three commenters object to the waiver request. The North Carolina Association of Community College Presidents (NCACCP) objects to SCETV's waiver request because the proposed custom GSA for one of the stations, Station WHQ477, "falls entirely within the State of North Carolina, and would therefore not provide any educational benefit to the citizens of North Carolina or South Carolina."<sup>22</sup> The Instructional Telecommunications Foundation, Inc. ("ITF") objects to the waiver request in light of the Commission's open proceeding seeking comment on how to license the remaining unassigned EBS spectrum.<sup>23</sup> ITF argues that the Bureau should deny the waiver request except in cases where the affected co-channel EBS licensee has given its consent and asks that the Commission complete the pending rulemaking on how to license the remaining available and unassigned EBS spectrum.<sup>24</sup> Christian College of Georgia, Inc. ("Christian College") objects to the waiver request on both procedural and substantive grounds.<sup>25</sup> Christian College argues that although SCETV asks for a waiver of Section 27.1206 of the Commission's Rules, it is really seeking an out-of-time reconsideration of the Commission's decision in the *Two-Way Second Reconsideration Order*.<sup>26</sup> Christian College further argues that SCETV is seeking a waiver not of Section 27.1206 of the Commission's Rules, but of the 1995 filing freeze.<sup>27</sup> Finally, the Catholic Television Network ("CTN") does not oppose the waiver request but urges the Commission to adopt rules on how to license the remaining EBS spectrum rather than granting GSAs on an ad hoc basis.<sup>28</sup>

### III. DISCUSSION

8. As discussed in detail below, SCETV seeks a "limited" waiver of Section 27.1206 of the Commission's Rules and argues that a grant of the waiver would further the underlying purpose of Section 27.1206 to ensure that stations licensed as STLs remained subordinate to stations licensed on a primary basis.<sup>29</sup> As a preliminary matter, however, we agree with Christian College that SCETV should have asked for a waiver of the Commission's decision in the *Two-Way Second Reconsideration Order*, where the Commission held that stations licensed as STLs would not be granted PSAs.<sup>30</sup> The underlying purpose of that decision was to ensure that the STLs, originally licensed on a secondary basis, remained

---

(...continued from previous page)

reply comments during the pleading cycle. We further grant Christian College of Georgia, Inc.'s request to file late-filed comments. See Christian College of Georgia, Inc. Comments (filed Aug. 30, 2011) ("Christian College Comments") at 8. We also grant SCETV's Motion for Leave to File Further Reply Comments (filed Sep. 9, 2011) to respond to the comments filed by Christian College.

<sup>21</sup> Rowan-Cabarrus Community College Comments (filed Oct. 10, 2010) ("Rowan-Cabarrus Comments") at 1. Asheville-Buncombe Technical Community College (filed Oct. 10, 2010) ("Asheville-Buncombe Comments") at 1.

<sup>22</sup> North Carolina Association of Community College Presidents Comments (filed Sep. 14, 2010) ("NCACCP Comments") at 1.

<sup>23</sup> Reply Comments of Instructional Telecommunications Foundation, Inc. (filed Oct. 12, 2010) ("ITF Comments") at 2.

<sup>24</sup> *Id.*

<sup>25</sup> Christian College Comments at 2.

<sup>26</sup> *Id.* at 3-4, 7.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> Reply Comments of the Catholic Television Network (filed Oct. 12, 2010) at 1-2.

<sup>29</sup> Waiver Request at 3-4.

<sup>30</sup> *Two-Way Second Reconsideration Order*, 15 FCC Rcd at 14572 ¶ 24. See Christian College Comments at 4.

subordinate to neighboring EBS stations that were licensed on a primary basis.<sup>31</sup> A station licensed on a secondary basis must not interfere with other stations licensed on a primary basis and it must accept interference from other stations licensed on a primary basis.<sup>32</sup> In the *BRS/EBS Report and Order*, the Commission converted stations that had been licensed on a PSA basis to stations licensed on a GSA basis.<sup>33</sup> The underlying purpose that decision was to eliminate inefficient, burdensome site-by-site licensing rules associated with licensing by PSA.<sup>34</sup>

9. We disagree with Christian College that SCETV's Waiver Request is an untimely-filed petition for reconsideration of the Commission's decision in the *Two-Way Second Reconsideration Order* not to grant PSAs to stations licensed as STLs.<sup>35</sup> Christian College mistakenly argues that in the *FAU Order on Further Reconsideration*, Florida Atlantic University petitioned for reconsideration of the Commission's decision in the *Two-Way Second Reconsideration Order*.<sup>36</sup> It did not. Florida Atlantic University sought reconsideration of the prior decision in which the Division denied FAU's request for reconsideration of staff actions correcting the Universal Licensing System database to reflect that FAU's four stations were, in fact, secondary STLs.<sup>37</sup> In the *FAU Order on Further Reconsideration*, the Bureau granted FAU a waiver of the Commission's decision in the *Two-Way Second Reconsideration Order*, and granted PSAs to four FAU stations licensed as STLs.<sup>38</sup> We also disagree with Christian College's allegation that SCETV is seeking a waiver of the filing freeze first adopted by the Commission in 1995.<sup>39</sup> The 1995 filing freeze is not applicable to this case. The last window for filing applications for new ITFS stations was in 1995.<sup>40</sup> In April 2003, as part of the BRS/EBS proceeding, the Commission extended the 1995 filing freeze.<sup>41</sup> Several months later, however, in August 2003, the Commission modified the filing freeze, in part, by permitting the filing of major modifications of EBS licenses.<sup>42</sup> Because the Stations are currently licensed, a grant of a GSA would be a major modification and would not violate the filing freeze as modified by the Commission in August 2003.

10. Nevertheless, we conclude that SCETV has not shown that a waiver is warranted in this case. To be granted a waiver under the Commission's Rules, SCETV must show that (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and

<sup>31</sup> *Two-Way Second Reconsideration Order*, 15 FCC Rcd at 14572 ¶ 24.

<sup>32</sup> See Charles T. Crawford, *et al.*, *Order on Reconsideration*, 21 FCC Rcd 5844, 5846 ¶ 5 (WTB PS&PWD 2006).

<sup>33</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14190-14191 ¶ 55.

<sup>34</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14189-14190 ¶ 54.

<sup>35</sup> Christian College Comments at 7.

<sup>36</sup> *Id.* at 4, citing Florida Atlantic University, *Order on Further Reconsideration*, 23 FCC Rcd 6914 (WTB 2008) ("*FAU Order on Further Reconsideration*").

<sup>37</sup> *FAU Order on Further Reconsideration*, 23 FCC Rcd at 6914 ¶ 1.

<sup>38</sup> *Id.*, 23 FCC Rcd at 6918 ¶ 11.

<sup>39</sup> Christian College Comments at 6-7.

<sup>40</sup> See Notice of Instructional Television Fixed Service Filing Window From October 16, 1995, through October 20, 1995, *Public Notice*, Report No. 23565A (rel. Aug. 4, 1995).

<sup>41</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 6722, 6813, 6825 ¶¶ 226, 260 (2003).

<sup>42</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of fixed and Mobile Broadband Access, Educational and Other advanced Services in the 2150-2162 and 2500-2690 Bands, *Second Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 16848, 16849 ¶ 1 (2003).



that a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>43</sup> In this case, SCETV argues that granting the Stations 12 customized GSAs furthers the Commission's decision that STLs remain subordinate to EBS stations licensed on a primary basis.<sup>44</sup> According to SCETV, the 12 customized GSAs would be subordinate to neighboring co-channel primary stations because GSAs of the Stations would not encroach upon the GSAs of the primary co-channel EBS stations.<sup>45</sup> SCETV argues that granting 12 "customized" GSAs is in the public interest because it would permit SCETV to eliminate coverage gaps in its network of EBS stations and thus deliver wireless broadband and educational services to areas that would otherwise be left without service.<sup>46</sup> Finally SCETV argues that granting it a waiver in this instance would be consistent with the Bureau's decision in the *FAU Order on Further Reconsideration*, in which the Bureau granted GSAs to four stations originally licensed as STLs.<sup>47</sup>

11. We find, however, that SCETV has not shown how granting customized GSAs to the 12 Stations would ensure that they remain "subordinate" to neighboring EBS stations and thus further the Commission's decision in the *Two-Way Second Reconsideration Order*. According to SCETV, the 12 Stations would remain "subordinate" to their neighboring EBS licensees because the Stations would be granted GSAs only for those areas that are outside the GSAs of the neighboring incumbent EBS stations.<sup>48</sup> SCETV is referencing the methodology adopted by the Commission in the *BRS/EBS Report and Order* to determine the boundaries of the GSAs when they were converted from PSAs, which was codified in Section 27.1206 of the Commission's Rules.<sup>49</sup> When the PSAs of adjacent co-channel licensees overlapped, Section 27.1206 requires that the GSA boundaries of adjacent co-channel licensees be determined by "splitting-the-football," in which the adjacent co-channel licensees draw a chord between the intersection points of their overlapping 35-mile PSAs.<sup>50</sup> Under SCETV's Waiver Request, SCETV would not "split the football" but would reduce the GSAs of the Stations so they would not overlap the GSAs of neighboring co-channel licensees. Thus, the GSA of the Station would be "customized" to fit within the unlicensed area. The result would be GSAs that are highly truncated and unusual in size. We reject, however, SCETV's characterization of the Commission's use of "subordinate" in the *Two-Way Reconsideration Order*. When the Commission used the term "subordinate" in the *Two-Way Second Reconsideration Order* it was not referring to the size of a GSA. It meant "secondary," as in stations licensed as STLs are licensed on a secondary basis and therefore they are "subordinate" to stations licensed on a primary basis.<sup>51</sup> Stations that are licensed on a secondary basis must accept interference from primary stations and must not cause interference to primary stations.<sup>52</sup> SCETV does not indicate that it is willing to operate the Stations on a secondary basis. Nor has it provided any evidence that neighboring EBS licensees have consented to providing interference protection to SCETV's secondary stations consistent with the technical rules applicable to EBS. Thus, we

---

<sup>43</sup> 47 C.F.R. § 1.925(b)(3).

<sup>44</sup> Waiver Request at 3-4.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.*

<sup>49</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14192 ¶ 60.

<sup>50</sup> See 47 C.F.R. § 27.1206(a)(1).

<sup>51</sup> See *Two-Way Second Reconsideration Order*, 15 FCC Rcd at 14572 ¶¶ 23-24.

<sup>52</sup> See Charles T. Crawford, *et al.*, *supra*, n.32.

find that SCETV has not shown how granting its waiver request furthers the Commission's decision in the *Two-Way Second Reconsideration Order*.

12. We also find that SCETV has not shown how granting it 12 customized GSAs is in the public interest. Although SCETV claims that it can eliminate coverage gaps and thus deliver wireless broadband and educational services to areas that would otherwise be left without service, it provides no evidence of schools or other educational institutions that would be deprived of wireless broadband service without grant of SCETV's waiver request. Nor does SCETV address the consequences to neighboring EBS stations that were licensed on a primary basis. According to the exhibit filed by SCETV with its petition, there are sixteen licensees that would be affected by grant of this waiver request.<sup>53</sup> Of these sixteen licensees, only two consented, Rowan-Cabarrus Community College and Asheville-Buncombe Technical Community College, and they consented only if their respected GSAs would not be reduced as a result of granting GSAs to the Stations.<sup>54</sup> Neither Rowan-Cabarrus Community College nor Asheville-Buncombe Technical Community College consented to the application of the Commission's technical rules affecting co-channel and adjacent channel licensees with regard to the proposed customized GSAs.<sup>55</sup>

13. Moreover, we agree with ITF that granting SCETV 12 "customized" GSAs during the pendency of the *BRS/EBS Second FNPRM*, an open proceeding to determine how to license unassigned and available EBS spectrum, is contrary to the public interest. On March 20, 2008, the Commission released the *BRS/EBS Second FNPRM* in which the Commission sought comment on designing a licensing scheme for EBS spectrum.<sup>56</sup> This proceeding has been fully briefed, and many EBS eligible entities are waiting for the opportunity to apply for EBS licenses. Once this proceeding has been terminated, SCETV will have an opportunity to apply for additional spectrum to fill in any coverage gaps it may have, while other EBS eligible entities will have the opportunity to apply for new licenses, which they have not been able to do for more than 15 years. We further agree with ITF that granting the Stations customized GSAs would encourage other licensees across the nation to seek waivers to convert their STLs to GSAs to the detriment of those EBS eligible entities that have been precluded from applying for EBS licenses since 1995.<sup>57</sup>

14. Finally, we find, contrary to SCETV's position, that grant of a waiver in this case would not be consistent with the Bureau decision in the *FAU Order on Further Reconsideration*.<sup>58</sup> In the *FAU*

<sup>53</sup> The following licensees would be affected by SCETV's Waiver Request: Charlotte-Mecklenburg Public Broadcasting (WHR535); University of North Carolina General Administration (WHR598); Trident Technical College (WHR932); Evans County School System (WLX698); Wrens Middle School (WLX862); University of North Carolina General Administration (WND363); Moore County Schools (WND399); Brunswick Community College (WND462); Stanly Community College (WND598); Central Piedmont Community College (WND599); University of North Carolina Center for Public Television (WND602); University of North Carolina Center for Public Television (WND605); Hispanic Information and Telecommunications Network (WND612); Rowan-Cabarrus Community College (WND613); Asheville-Buncombe Technical Community College (WND616); and Christian College of Georgia (WND620). Waiver Request at Attachment A.

<sup>54</sup> Rowan Cabarrus Community College (WND613) and Asheville-Buncombe Technical Community College (WND616) would affect the GSA for Station WHQ447.

<sup>55</sup> See Rowan-Cabarrus Comments, Asheville-Buncombe Comments.

<sup>56</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6060-6068 ¶¶ 180-204 (2004).

<sup>57</sup> See ITF Comments at 3.

<sup>58</sup> See Waiver Request 4-5.

*Order on Further Reconsideration*, the Bureau granted FAU's waiver request and granted GSAs to four stations that had been licensed as STLs.<sup>59</sup> In that case, FAU had obtained consents from all of the affected licensees, who consented so long as their respective GSAs were not reduced.<sup>60</sup> Here, only two of the SCETV's 16 affected neighbors have consented to SCETV's waiver request.<sup>61</sup> In the *FAU Order on Reconsideration*, FAU's neighbors also consented to the application of the normal FCC rules affecting neighboring co-channel and adjacent-channel stations to the operation of "these neighboring GSA facilities including, as applicable, those contained in Section 27.53, 27.55, and 27.1221."<sup>62</sup> Here, not one of SCETV's neighbors consented to the application of the normal licensing rules governing the operation of co-channel and adjacent channel stations. Finally, FAU filed its petition for reconsideration on August 10, 2007, seven months before the Commission released the *BRS/EBS Second FNPRM*, in which it sought comment on how to license unassigned and available EBS spectrum.<sup>63</sup> Here, SCETV requested a waiver during the pendency of the proceeding.<sup>64</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

15. SCETV has failed to show that a grant of its waiver request would further the Commission's decision in the *Two-Way Second Reconsideration Order* that stations licensed as STLs remain subordinate to licensed on a primary basis. SCETV has also failed to show that a grant of its waiver request is in the public interest.

16. For the reasons stated above, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925 that the Petition for Waiver of Section 27.1206 of the Commission's Rules filed by South Carolina Educational Television Commission on August 6, 2010 IS DENIED.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45, that the Motions For Leave to File Further Reply Comments filed by South Carolina Educational Television Commission filed on October 21, 2010 and September 9, 2011, and the request to submit late-filed comments made by Christian College of Georgia, Inc. on August 30, 2011 ARE GRANTED.

#### FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

---

<sup>59</sup> *FAU Order on Further Reconsideration*, 23 FCC Rcd at 6918 ¶ 12.

<sup>60</sup> *Id.*, 23 FCC Rcd at 6917-6918 ¶ 9.

<sup>61</sup> See Rowan-Cabarrus Comments, Asheville-Buncombe Comments.

<sup>62</sup> *FAU Order on Further Reconsideration*, 23 FCC Rcd at 6918 ¶ 10.

<sup>63</sup> *Id.*, 23 FCC Rcd at 6914 ¶ 1.

<sup>64</sup> See Waiver Request.